U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

BS

FILE: LIN 05 089 51224 Office: NEBRASKA SERVICE CENTER Date: NOV 30 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. from Oklahoma State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, plant genomics, and that the proposed benefits of his work, improved understanding of plant – pathogen interactions, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner obtained his Master's degree in plant breeding at the University of the Philippines at Los Baños in 1996. He then worked as a senior science research specialist at the Philippine Rice Research Institute from 1997-1999. The petitioner then attended Oklahoma State University, receiving his Ph.D. in 2002. As of the date of filing, the petitioner was working as a postdoctoral research associate at Iowa State University.

During the time the petitioner was at the Philippine Rice Research Institute, Dr. [redacted] currently an assistant professor at Texas A&M University, was the Chief Science Research Specialist. Dr. [redacted] asserts that the petitioner's work at the institute "impacted the national breeding directions in rice to avoid catastrophic events like the potato blight and corn blight that caused wide scale famine." While Dr. [redacted] asserts that this work was "directed at" increasing rice yield and reducing world hunger, he does not discuss the petitioner's ultimate results on this project. The petitioner did submit evidence that the local Los Baños government issued an award to the petitioner's work analyzing "the diversity for phonotypic traits of 78 improved rice varieties released from 1965 to 1995." The petitioner also received "Best Poster" recognition from a 1997 regional symposium for his work entitled "New Rice Varieties for Different Ecosystems." Finally, the petitioner's paper on using molecular markers to analyze the biodiversity of rice germplasm was a semi-finalist in the Best Paper Competition during the 14th Annual Conference of the Federation of Crop Science Societies of the Philippines in 1998. The petitioner failed to submit any evidence regarding the significance of this recognition. We note that recognition from government entities and peers is one of the criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting one criterion or even the necessary three criteria warrants a waiver of that requirement.

Dr. [redacted], the petitioner's Ph.D. advisor at Oklahoma State University, asserts that the petitioner was a pioneer at the university. Dr. [redacted] elaborates:

> [The petitioner's] work was published as a thesis in which he detailed the identities of several genes that were associated with leaf rust infection. Leaf rust is the major disease in wheat having tremendous economic and agricultural importance to the United States and the World. Not only did he describe the genes involved in the

> infection process he also developed a theoretical foundation for their interactions. In my opinion his work in the area was way ahead of most students performing similar studies at the time. His efforts were honored in the Department for the top research project at the time.

Dr. [redacted] explains that he recommended the petitioner for a number of positions based on this work, including the petitioner's current position at Iowa State University.

Dr. [redacted] Wise, the petitioner's supervisor at Iowa State University, discusses the petitioner's investigation of "resistance mechanisms mediated by the *Mla* powdery mildew resistance gene by global expression profiling using the newly developed [redacted]p, a worldwide uniform platform to investigate the function of 22,000 cereal genes in a single experiment." This work is designed to understand how pathogens cause disease and how hosts mount defenses against them. Dr. [redacted] laboratory was already involved with an international effort to create the [redacted] when the petitioner joined the laboratory. The petitioner's "novel [redacted] analysis strategy has accelerated the high-throughput identification of rate-limiting steps in disease defense pathways."

As of the date of filing, the article reporting this project had just been published in *The Plant Cell* with a commentary by [redacted], the journal's News and Reviews Editor. The commentary characterizes the petitioner's work as "an excellent example of a well-designed and analyzed set of transcript profiling experiments that give us valuable new resources as well as novel insights into the expression of plant defense responses." The commentary further provides that the "strength of this work comes not solely from the amount of replication and total number of hybridizations performed, but even more importantly, from the careful experimental design that accounted for changes in gene expression over time and differences in host-pathogen interactions depending on plant and fungal genotype."

Dr. [redacted] Chair of the Genetics Graduate Group at the University of California, Davis and the editor at *The Plant Cell* who handled the petitioner's paper, asserts that the paper "was the best paper of its type so far and this experiment, particularly the statistical analysis, is a model for future GeneChip experiments." Dr. [redacted] further discusses the prestigious reputation of the *The Plant Cell*.

Other members of the field who claim no "interest" in the petitioner's immigration but who have collaborated with him provide similar information, praising the petitioner's microarray skills. Dr. [redacted] a former collaborator of Dr. [redacted] now at the University of Delaware, asserts that he knows the petitioner through his publications. Dr. [redacted]s praises the petitioner's skills and multidisciplinary background, predicting that the petitioner's work will ultimately lead to improved barley varieties. Dr. [redacted]s does not, however, claim to have adopted the petitioner's methods for analyzing microarray data.

In response to the director's request for additional evidence, the petitioner submitted evidence that two of his articles had been cited seven and 12 times. The only one of the seven citations of the article in *The Plant Cell* dated prior to the filing of the petition is the commentary that appeared in the same issue of that journal. In addition, only one of the research teams citing the article in *The Plant Cell* claims to be utilizing the petitioner's protocol and that group is another laboratory at Iowa State University. Of the 12 citations of the petitioner's article in *Plant Physiology*, only four are from independent research teams and of those, only two predate the filing of the petition.

The director concluded that the letters were insufficient and that the petitioner had not been widely or frequently cited as of the date of filing. The director acknowledged that the petitioner's article was the subject of a commentary, but concluded the commentary was not evidence of the article's subsequent impact.

On appeal, the petitioner asserts that the reference letters should be given evidentiary weight as the authors are all experts in their field and agree that the petitioner is exceptional. The petitioner continues to assert that the very inclusion of his article in *The Plant Cell* is indicative of the article's impact. Finally, the petitioner notes his membership in an academic honor society. The petitioner submits a letter from Dr. [redacted] Chair of the Department of Plant Pathology at Iowa State University, reiterating previous claims and asserting that the petitioner has given guest lectures at the university.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of skill and a positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

The letters submitted are almost entirely from the petitioner's collaborators. While such letters are useful in demonstrating the petitioner's role on a given project, they cannot, by themselves, establish his influence in the field as a whole. The more independent letters provide no examples of research teams applying the petitioner's protocols.

We will not presume the influence of a given article solely from the prestige of the journal in which it appeared. Rather, the petitioner must provide evidence that the individual article was influential in the

field. We concur with the director that the contemporaneous commentary, while indicative of the journal's belief of the promising nature of the petitioner's work, is not evidence that the article did, in fact, prove influential. As of the date of filing, the petitioner had not been widely or frequently cited in the field. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner cannot file a petition based on work just published in the hope that citations will be forthcoming later in the proceeding. Moreover, even the citations provided in response to the request for additional evidence and on appeal do not suggest that the petitioner's protocol is being widely adopted.

The petitioner's membership in Gamma Sigma Delta, the Honor Society of Agriculture at Oklahoma State University, is in recognition of high scholarship, outstanding achievement or service. Academic performance, however, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6.

Finally, the fact that the petitioner, a researcher at Iowa State University, has given guest lectures at the university is not evidence of his influence beyond the university.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.